

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JERMAINE MOORE,	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al.,	:	CIVIL ACTION
Defendants.	:	NO. 14-133
	:	

PRETRIAL MEMORANDUM

Defendants City of Philadelphia, Correctional Officers Jason Grundy, Daisy Ortiz, Donovan Bynum, Michael Capers, James Palmer III, Carlos White, and Enrique Marin, by and through the undersigned counsel, hereby submit the following Pretrial Memorandum pursuant to Rule 16.1(c) of the Local Rules of Civil Procedure. Defendants reserve the right to amend and/or supplement this Pretrial Memorandum prior to trial.

I. BRIEF STATEMENT OF NATURE OF ACTION AND BASIS OF JURISDICTION

Plaintiff's action asserts civil rights claims brought pursuant to 42 U.S.C. §1983 for alleged violation of his civil rights arising under the United States Constitution. Jurisdiction is based upon 28 U.S.C. §1331 and 1343.

II. BRIEF STATEMENT OF FACTS

Plaintiff has filed the instant Section 1983 civil rights action in which he alleges that he was subjected to excessive force under the Fourteenth Amended, Cruel and Unusual Punishment under the Eight Amendment. Specifically Plaintiff alleges that the Correctional Officer Defendants used force against for purposes other than to maintain security and control within the prison.

Defendants maintain that while waiting to be frisked, Plaintiff made a request of Officer Jason Grundy if he could use the bathroom, to which Officer Grundy said to hold on for a second. Plaintiff ignored Officer Grundy's command and entered an area of the prison prior to Plaintiff being searched. A physical altercation ensued where Officer Grundy attempted to gain control of Plaintiff, and in response Plaintiff attempted to strike Officer Grundy. Officer Grundy struck Plaintiff in the face one time, then attempted to place Plaintiff in restraints. Three other officers responded and assisted Officer Grundy in placing Plaintiff in restraints.

At all times defendants acted properly and used on the amount of force necessary to gain control of plaintiff and to maintain the safety and security of the prison.

III. DAMAGES

Defendants deny that they used excessive force as Plaintiff alleges, and that any injuries suffered by Plaintiff were not directly or indirectly caused by the Defendants. Defendants seek judgment in their favor, along with costs and fees incurred defending this action.

IV. DEFENDANTS' WITNESS LIST

A. Liability Witnesses

1. Correctional Officer Jason Grundy, Curran-Fromhold Correctional Facility, 8301 State Road, Philadelphia, PA 19136
2. Correctional Officer Michael Capers, Curran-Fromhold Correctional Facility, 8301 State Road, Philadelphia, PA 19136
3. Correctional Officer Carlos White, Curran-Fromhold Correctional Facility, 8101 State Road, Philadelphia, PA 19136
4. Correctional Officer Majovie Billups, Curran-Fromhold Correctional Facility, 8301 State Road, Philadelphia, PA 19136
5. Correctional Officer Daisy Ortiz, Curran-Fromhold Correctional Facility, 8301 State Road, Philadelphia, PA 19136
6. Plaintiff Jermaine Moore

Defendants reserve the right to modify or supplement this list upon good cause shown.

B. Damages Witnesses

1. Correctional Officer Jason Grundy, Curran-Fromhold Correctional Facility, 8301 State Road, Philadelphia, PA 19136
2. Correctional Officer Michael Capers, Curran-Fromhold Correctional Facility, 8301 State Road, Philadelphia, PA 19136
3. Correctional Officer Carlos White, Curran-Fromhold Correctional Facility, 8101 State Road, Philadelphia, PA 19136
4. Correctional Officer Majovie Billups, Curran-Fromhold Correctional Facility, 8301 State Road, Philadelphia, PA 19136
5. Correctional Officer Daisy Ortiz, Curran-Fromhold Correctional Facility, 8301 State Road, Philadelphia, PA 19136
6. Plaintiff Jermaine Moore

Defendants reserve the right to modify or supplement this list upon good cause shown.

V. DEFENDANTS' TRIAL EXHIBITS

1. Report of Use of Force by Employee – Officer Jason Grundy (Bates No. 571)
2. Report of Use of Force by Employee – Officer Majovie Billups (Bates No. 572)
3. Report of Use of Force by Employee – Officer Carlos White (Bates No. 570)
4. Report of Use of Force by Employee – Officer Michael Capers (Bates No. 569)
5. Memorandum of Officer Daisy Ortiz (Bates No. 583)
6. Police Referral (Bates No. 579)
7. Philadelphia Police Department Complaint or Incident Report (Bates No. 578)
8. Inmate Account of Use of Force Incident (Bates No. 586)
9. Sick Call Request (Bates No. 138)
10. Inmate Misconduct Report, October 3, 2011 (Bates No. 78-79)

11. Inmate Misconduct Report, April 7, 2012 (Bates No. 58-59)

Defendants may or may not introduce the exhibits listed. Defendants reserve the right to modify or supplement this list upon good cause shown.

VI. DEPOSITION DESIGNATIONS

Defendants intend to use the deposition transcript of Plaintiff Jermaine Moore solely for the purpose of impeachment.

VII. ESTIMATED LENGTH OF TRIAL

Defendants anticipate that the presentation of evidence in their case will require one (1) day.

VIII. LEGAL ISSUES

Defendants have filed a motion for summary judgment seeking the dismissal of Defendants City of Philadelphia, Officer Daisy Ortiz, Officer Donovan Bynum, Officer Enrique Marin, and Officer James Palmer III. The moving defendants' motion is still pending.

Respectfully submitted,

Dated: October 16, 2014

/s/Dimitrios Mavroudis
Dimitrios Mavroudis
Assistant City Solicitor
City of Philadelphia Law Department
1515 Arch Street, 14th Floor
Philadelphia, PA 19102
(215) 683-5444
For the Defendants

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CERTIFICATE OF SERVICE

I, Dimitrios Mavroudis, do hereby certify that a true and correct copy of Defendants' Pretrial Memorandum has been filed via ECF and served upon the following by Electronic Mail, on October 16, 2014:

Rania Major
2915 North 5th Street
Philadelphia, PA 19133
Attorney for Plaintiff

/s/Dimitrios Mavroudis
Dimitrios Mavroudis
Assistant City Solicitor
City of Philadelphia Law Department
1515 Arch Street, 14th Floor
Philadelphia, PA 19102
(215) 683-5444
For the Defendants